IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 15TH NOVEMBER 2006 / 24TH KARTHIKA 1928

WP(C).No. 30538 of 2003(I)

PETITIONER:

P.P. NARAQYANAN S/O. GOVINDAN,
AGED 54 YEARS, TECHNICAL SUPERINTENDENT
(WEAVING), HANLOOM TRAINING INSTITUTE, THOTTADA,
KANUR-7, RESIDING AT THUSHARAM, KALLAMALA,
CHOMBALA P.O., VADAGARA, KOZHIKODE.

BY ADV. SRI.M.R.RAJENDRAN NAIR

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, INDUSTRIES DEPARTMENT,
TRIVANDRUM

2. THE INSTITUTE OF HANDLOOM AND TEXTILE
TECHNOLOGY, REPRESENTED BY ITS EXECUTIVE DIRECTOR,
KIZHUNNA P.O., KANNUR.

BY ADV. SRI.ANTONY DOMINIC FOR R2
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.30538/2003

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF PROCEEDINGS NO.HTI/GB/A1/90 DATED 01.09.1990 ISSUED FOR 2ND RESPONDENT.

EXHIBIT P2: STATEMENT OF PAY FIXATION DATE 29.1.1994 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P3: TRUE COPY OF GO(P) 81/94(5)/FIN DATED 02.02.1994.

EXHIBIT P4: TRUE COPY OF ORDER NO.HTI/ADM/1/89 DATED 18/3/1994.

EXHIBIT P5: TRUE COPY OF GO (MS) nO.148/94/ID DATED 13/07/1994

EXHIBIT P6: TRUE COPY OF HTI/ADM/1/89/1274 DATED 30.09.1994.

EXHIBIT P7: TRUE COPY OF ORDER NO.HTI/ADM/1/89 DATED 18.10.1994.

EXHIBIT P8: TRUE COPY OF RESOLUTION NO.25 DATED 3.11.1998 OF THE GOVERNING BODY OF THE 2ND RESPONDENT.

EXHIBIT P9: TRUE COPY OF GO(MS) 157/99/ID DATED 11.11.1999.

EXHIBIT P10: TRUE COPY OF THE JDUGMENT DATED 22.01.2003 IN OP 14450/1994.

EXHIBIT P11: TRUE COPY OF REPRESENTATION DATED 30.1.2003.

EXHIBIT P12: TRUE COPY OF THE ORDER NO.IHTT/ADM/1/87 DATED 23.08.2003 ISSUED FOR THE 2ND RESPONDENT.

EXHIBIT P13: TRUE COPY OF THE ORDER NO.IHTT/ADM/1/87 DATED 30/8/03 ISSUED FOR THE 2ND RESPONDENT.

EXHIBIT P14: TRUE COPYOF THE MEMORANDUM OF ASSOCIATION OF THE HANDLOOM TRAINING INSTITUTE.

EXHIBIT P15: A TRUE COPY OF RESOLUTION NO.194 DATED 17.10.1994

EXHIBIT P16: A TRUE COPY OF LETTER NO.HTI/ADM/484/92/1418 DATED 15.11.1994 SEND TO THE GOVERNMENT BY THE 2ND RESPONDENT.

EXHIBTI P17: A TRUE COPY OF LETTER NO.2549/C1/95/ID DATED 1.6.95 ISSUED BY THE 1ST RESPONDENT.

EXHIBITS OF R2

EXHIBIT R2(a): TRUE COPY OF THE GOVERNMENT ORDER NO.94/C1/2000/ID DATED 29.02.2000 PASSED BY THE 1ST RESPONDENT.

EXHIBIT R2(b): TRUE COPY OF THE GOVERNMENT LETTER NO.11462/C1/03/ID DATED 11.07.2003.

//TRUE COPY//

P.S. TO JUDGE

P.R. RAMAN, J.

W.P.© 30538/2003

DATEDTHIS, THE 15TH DAY OF NOVEMBER, 2006

J U D G M E N T

Petitioner is now working as a Technical Superintendent (Weaving) in the handloom Training Institute, which is a Society over which the Government has got administrative control. The post of Technical Superintendent was created in the Institute with effect from 9.5.1987 by the management who is in the affairs of the Society. Petitioner, who was working in Government Service, was appointed to the said post initially, by way of deputation with effect from 19.10.1987 and subsequently, absorbed on regular basis as per Ext.P1 dated 1.9.1990, effective from the date of deputation, namely 19.10.1987. As per Ext.P1 he was absorbed in service in the scale of pay of Rs. 1250-50-1600-60-1900-75-2500.

2. It is evident from Ext.P1 that it is subsequent to the approval made by the governing body in its resolution No. 014 dated 9.5.1987 that Ext.P1 was issued. Thereafter, the pay revision in the corresponding category in Government service was extended to the petitioner on two occasions from 1.7.1988 and subsequently with effect from 1.3.1992 (possibly, there were two pay revisions during this period). Ext.P2 is the

statement of pay fixation in the revised scale effective from 1.3.1992. The Government by Ext.P3 dated 2.2.1994 ordered that for creation of posts in the grant in aid institutions, statutory corporation, etc. previous sanction of the Government is required. Prior to that, by the decision of the Society, pay revision benefits were already extended to the petitioner on two occasions as already noted above.

3. Pursuant to Ext.P3, the Handloom Training Institute, by Ext.P6 dated 30.9.1994 ordered to with-hold the revised scale of pay with effect from 30.9.1994 for want of Government sanction/approval. By Ext. P5 order - G.O.(Ms) No. 148/94/ID dated 13.7.1994 Government had already sanctioned the post of Technical Superintendent (Weaving) on 19.10.1987, the date on which petitioner was already absorbed in the scale of pay of Rs. 1650-3175. Therefore, in effect, Ext.P6 is only with-holding the revised salary extended to the petitioner by way of pay revision extension made in the meanwhile and continued to receive the salary in the appointed scale. The Government, by Ext.P9 G.O.(MS) No. 157/99/ID dated 11.11.1999 also accorded sanction to revise the scale of pay of the Technical Superintendent in the Institute on par with the pay revision orders issued as per Government Order dated 25.9.1993 with effect from

13.7.1994, the date on which sanction was accorded as per Ext.P5. However, the monetary benefit was confined to the period from 1.4.1995 only. Though the petitioner preferred an original petition before this court, seeking certain clarification in the matter when there was a reduction in the scale of pay, this Court by Ext.P10 judgment in O.P. 14450/1994 directed the authorities to consider his representation and pass orders accordingly. Exts. P12 and P13 are the orders subsequently passed which are impugned in this writ petition.

4. Ext.P12 is an order passed by the Institute of Handloom And Textile Technology pursuant to the judgment as aforesaid, fixing the pay of the petitioner at Rs. 2375/- with effect from 13.7.1994 with monetary benefits from 1.5.1995 allowing increments and grade promotion sanctioned consequently by the executive director from time to time. Ext.P13 was subsequently issued ordering recovery of excess pay and allowance drawn and disbursed to the petitioner from 13.7.1994 to 31.3.1995. According to the petitioner, there is no necessity for Government sanction or approval for sanctioning the post in the Institute. He places reliance on some of the clauses contained in the Memorandum of Association produced as Ext.P14. According to him, the question is

academic since the Government has already sanctioned the post with effect from the date on which petitioner was absorbed. It was then contended that for granting the revised scale of pay also, the governing body is the ultimate authority and no Government sanction is required. But no decision of the governing body is produced resolving to extend the parity in the scale of pay of the Government Service and extending such revised scale of pay from time to time to the employees of the Institute.

5. Be that it may, it can be presumed, in the absence of any contra evidence in the case that until Ext.P3 was issued by the Government, the management of the Institute was also under the impression that they could extend the benefit of revision of scale of pay on par with that of the Government employees, based on pay revision effected from time to time. The position is different after Ext.P3 since this being a Government aided institute and the Society itself thought to abide by Ext.P3, it cannot be said that there is any right in an employee to say that the governing body is not bound by Ext.P3. But when the Government itself had sanctioned the post with effect from the date on which the petitioner was absorbed in to the service of the Institute and having extended the pay revision also subsequently, the only question remains for consideration is whether the

amount paid at the revised scale of pay pursuant to Ext.P3 and prior to Ext.P8 is liable to be recovered.

6. In this context, though Ext.P13 says that excess pay and allowances drawn by the petitioner from 13.7.1994 to 31.5.1995 is to be recovered if as a matter of fact, with effect from 30.9.1994 when Ext.P6 was issued with-holding the pay at such revised rate and if actually, petitioner is not paid at such revised scale thereafter, necessarily, the recovery should be confined to the period from 13.7.1994 to 30.9.1994 the date on which Ext.P6 is issued. But this being a question of fact, and in the absence of any specific averments thereto, petitioner can submit a representation to the respondent Institute pointing out the fact as to whether he drew any excess pay after Ext.P6 and if as a matter of fact, no such pay was given to him pursuant to Ext.P6, necessarily, the respondent has to confine the recovery for the period between 13.7.1994 to 30.9.1994 and grant necessary relief in this regard.

7. In the circumstance, all that is required is to enable the petitioner to prefer a representation in this behalf in which event, the respondent shall duly consider the same and pass orders in accordance with law, after adverting to the material facts involved in the case, as expeditiously as

possible, at any rate, within a period of three months from the date of receipt of such representation from the petitioner. Till such time, the stay against recovery pursuant to Ext.P13 will continue.

The writ petition is disposed of as above.

P.R. RAMAN,
(JUDGE)

knc/-